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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66, et al.,
Appellants,
v.
HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Appellees.

No. 233

BRIEF OF APPELLEES.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

St. Louis Law Printing Co., 415 N. Eighth St. Main 1819, Central 919.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66; A. M. REUTER, A. L. BIRKENMEIER, H. EHLENBECK, CHARLES KAYSING, JOHN SMITH, MICHAEL LITTLE, JOHN LECHNER, CHARLES MORGAN, PAUL BERRY, EDWARD SCHILLING, AMBROSE KINTZ, STEPHEN WILHELM, WALTER DECHANT, ESTHER BRADLEY, NORA WIELAND, MALLEY COLLEY, WALTER FLEHER, THOMAS HALLIBURTON, J. PERRY, JOHN REMSTEDT, CHARLES REUBEN, HENRY SCHNITZ, THEO. SUMMERS, CHARLES TADESCO, FRED TENTSCHERT, RAY WATKE, WALTER WEBBER, JOHN ZIMMERMAN, HERMAN DIECKHORNER, JOE KUHN, WM. BALMER, ROBT. GINNER, TOM CAITO, FRANK CAITO, RUDOLPH KOOB, ANTON PAULEY, LEO PAULEY, ROBERT WARSING, STEVE ZOELLER, TONY SANSON, ANNIE STECKER, SYLVESTER SCHNITZ, GUS NENNINGER, GEORGE WENK and BENJAMIN SCHNITZ,
Appellants,

v.

HERKERT & MEISEL TRUNK COMPANY, a Corporation; P. C. MURPHY TRUNK COMPANY, a Corporation; JAMES A. QUIRK TRUNK COMPANY, a Corporation; STABILITY LEATHER GOODS MANUFACTURING COMPANY, a Corporation, and H. A. KOLB TRUNK & CASE COMPANY, a Corporation,
Appellees.

No. 878.

BRIEF OF APPELLEES.

STATEMENT.

This suit was commenced in the District Court of the United States for the Eastern District of Mis-

souri, by five corporations organized under the laws of Missouri. The petition stated that each of the plaintiff corporations was engaged in the manufacture of trunks, leather goods and leather bags; that each had been so engaged for a number of years, and had built up a large and valuable manufacturing business, and was engaged in shipping its products in interstate commerce; that each of the plaintiffs had a large number of customers in various cities and territories of the United States to which it had been shipping its products in interstate commerce; that each had accepted orders for goods to be shipped in interstate commerce; that its customers were demanding the filling of these orders, and that such orders would be canceled unless shipments were made promptly. It was furthermore stated that each of the plaintiffs was receiving large quantities of raw materials from which trunks, leather goods and leather bags were manufactured, which raw materials were shipped to the plaintiffs in interstate commerce. The petition charged that the defendant United Leather Workers International Union Local Lodge No. 66 and the individual defendants named as officers, members or agents of said union had determined that the plaintiffs should enter into a contract with the union, by the terms of which contract the plaintiffs should agree to employ none but union labor in their factories, and, to compel the plaintiffs to sub-

mit to this demand of the defendants, the defendants had conspired together and with persons unknown to prevent plaintiffs (until they acceded to the demands of the defendants) from carrying on their interstate commerce by boycotting plaintiffs, and by inaugurating a strike against the plaintiffs, by preventing the employes of plaintiffs from continuing their employment, by assaults, abuse and other unlawful means, and thereby preventing plaintiffs from manufacturing the goods necessary to the carrying on of their interstate commerce.

The petition further charged that at the time the defendants entered into the conspiracy referred to, defendants well knew that plaintiffs were engaged in interstate commerce, and that the unlawful acts charged to have been committed by the defendants had prevented the plaintiffs from continuing their interstate business; that the defendants were endeavoring to destroy this interstate business, and declared that they would continue to do so unless plaintiffs acceded to the demands of the defendants.

The petition alleged that in pursuance of the conspiracy described the defendants inaugurated a strike of the employes of plaintiffs and proceeded to picket plaintiffs' places of business, and to assault, threaten and abuse plaintiffs' employes, and to intimidate persons seeking employment, and that by such means

prevented plaintiffs carrying on their interstate commerce business.

Plaintiffs prayed for an injunction to prevent the unlawful practices referred to. Upon an answer being filed and a trial having been had, the Court found the issues in favor of the plaintiffs and issued the injunction prayed for. The District Court rendered a written opinion containing its finding of facts and conclusions of law. The Circuit Court of Appeals concurred in the findings of the District Court as to the facts, and as this Court has made it a rule not to disturb the findings of fact of two lower courts (Washington Securities Co. v. U. S., 234 U. S. 76; E. L. Waterman Co. v. Modern Pen Co., 235 U. S. 88; Mo. R. Co. v. Omaha, 235 U. S. 121; Texas & Pac. R. R. Co. v. R. R. Commissioners, 232 U. S. 338), the facts to which your Honors' attention will be called are limited to those disclosed in the opinion of the District Court and that of the Circuit Court of Appeals for the Eighth Circuit. They are as follows:

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, handbags and similar articles, which they sell on orders in the State of Missouri and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales on orders for

their products in states other than the State of Missouri.

At the time of the strike hereinafter referred to plaintiffs had accepted orders for goods to be shipped in interstate commerce in the amounts as follows: Herkert & Meisel Trunk Company, $200,000.00; James A. Quirk & Company, $15,000.00; F. A. Kolb Trunk and Case Company, $5,000.00; Stability Leather Goods Company, $32,000.00; P. C. Murphy Company, $75,000.00—a total of $327,000.00. At that time these plaintiffs had a continuous flowing current of interstate commerce from Missouri to other states which carried their goods of a value of more than $2,500,000.00 per annum.

The strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment of the employes.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employes of the plaintiffs quit plaintiffs' employ.

Thereafter, and until the temporary restraining order was issued herein, the several shops of plaintiffs were picketed by striking employes; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs or some of them. During this picketing

many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employes and divers employes who continued in the employment of plaintiffs vile and opprobrious names; there were instances of domiciliary visits, accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers, so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. In fact, the large proportion thereof which plaintiffs would have made but were, in the mode above mentioned, prevented from making would have been shipped when manufactured to other states to fill what is known in the record as "interstate orders."

There was no actual interference with or hindrance of any interstate movement or shipment of any goods made by plaintiffs, but the necessary and inevitable effect of the prevention and restriction of the making of the articles that plaintiffs contracted to make, sell and deliver, was to prevent, for a time, and drastically restrain planitiffs' interstate commerce. It was the purpose and intent of the defendants to prevent, if possible, and if not, to restrict, plaintiffs' interstate commerce, and thereby cause plaintiffs loss

of income and injury and force plaintiffs to accede to the demands of the defendants.

The District Court expressed its finding, with respect to the existence of the conspiracy charged in the petition, in the following language:

> "I conclude that the facts and circumstances disclose a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit."

ARGUMENT.

The pleadings and proof disclose that the five plaintiffs are large manufacturers of leather goods. They are all located in the City of St. Louis, Missouri, which is a large manufacturing and commercial center. In this large manufacturing and commercial center the plaintiffs are the only concerns engaged in the manufacture of trunks, leather goods and bags. They do all the business in these articles originating in this large commercial center. The larger part of this business is interstate in character. Only a small part of their products are sold in the State of Missouri. Their interstate business exceeds $2,500,000.00 a year. At the time of the events complained of in the petition, each of the plaintiffs had unfilled "interstate orders"—that is, accepted orders to be manufactured and shipped to customers in other states. The defendants were, at the time of the happenings disclosed in the evidence, their employes, the labor union to which they belonged, and the officers thereof.

The pleadings and proof disclose a quite common succession of events in labor disputes.

First, the defendants formed the purpose of completely unionizing the factories of the plaintiffs.

Secondly, they attempted to accomplish this pur-

pose by negotiations with plaintiffs. In this they failed.

Thirdly, they conspired together to destroy the business of plaintiffs until such time as plaintiffs would consent to the unionization of their factories.

It is the third of these succession of events of which the plaintiffs complain. We may concede that the first—the formation of the purpose to unionize plaintiffs' factories—was a lawful one. We may concede that the second—the attempt to accomplish this purpose by negotiation—was a lawful one. As to this no complaint is made. But as to the third—the formation of the conspiracy to destroy plaintiffs' business, and the acts done in pursuance thereof—plaintiffs say these were violative of the Anti-Trust Act, because by this conspiracy and its execution, a direct restraint was intended and placed upon the interstate business of the plaintiffs.

It is essential that the precise objects of the conspiracy complained of be kept in mind. This is so because, unless the conspiracy and the acts done in pursuance of it, have a direct relation to interstate commerce, the District Court had no jurisdiction of the suit. On the other hand, if the object of the conspiracy was a destruction or restriction of interstate commerce, and if the means contemplated and adopted in the carrying out of the conspiracy materially affected interstate commerce, then they were

violative of Anti-Trust Act, and the District Court did have jurisdiction.

In arriving at an understanding of the precise nature of the conspiracy complained of, it may be said that plaintiffs do not complain of the formation of the defendants' purpose to unionize their factories. Nor do they complain of the fact that the defendants entered into negotiations with them for the purpose of securing the unionization of their factories. These happenings are recited in the petition merely to inform the Court of the situation prior to the time that the unlawful conspiracy is charged to have been formed, and is explanatory of the circumstances under which the conspiracy was resorted to. They are not alleged as parts of the conspiracy, but as antedating the conspiracy. The conspiracy was formed after negotiations had failed. The lawfulness or unlawfulness of the conspiracy is not to be judged by what preceded it. It is not to be judged by the purposes inspiring the defendants prior to its formation, rather, it is to be judged by what they agreed to do, and did do, and the immediate objects they had in mind to accomplish by their acts. What was it they agreed to do, and what were their immediate objectives?

Simply stated, their immediate object was the destruction of plaintiffs' business; that is what the petition charged them with conspiring to do, and that

is what the District Court and the Circuit Court of Appeals have found they conspired to do. This was the primary thought in their minds. True, the destruction of the plaintiffs' business was a part of their general plan to unionize plaintiffs' factories. As to this general plan plaintiffs make no complaint and have no right to complain of it. But plaintiffs do claim in their petition, and have proved to the satisfaction of the Court, that the defendants agreed among themselves by unlawful means to destroy, and did destroy, their interstate business, and this, they say, is prohibited by the Anti-Trust Act.

To accomplish this destruction they had a choice of means available to them. They could have boycotted plaintiffs' goods in the hands of their customers. This would have been more difficult, because it probably would have required their enlisting the co-operation of other labor organizations and labor sympathizers in the states where plaintiffs' goods were being sold. It would also have been less effective, because large sections of the public would refuse to respond to their appeals. Or they could have attempted to prevent the transfer companies from hauling plaintiffs' goods to the railroads for shipment. This they were probably not strong enough to do, and besides, such a course would have brought them into more certain conflict with the police. Or they could do as they did do, assault and

abuse those who desired to continue at work, and those who sought employment with plaintiffs, and thereby prevent plaintiffs' factories from operating. This latter was the easiest, safest and most certain method of destroying plaintiffs' business. So defendants adopted this method. It was completely successful. Plaintiffs' business was, for a time, completely paralyzed. Their interstate business ceased. It was only after the injunction was issued that this interstate business was restored, though at first in restricted volume.

That the conspiracy was one to destroy plaintiffs' interstate business, and that the defendants conspired to destroy this interstate business by preventing plaintiffs' factories from operating was established by the evidence and found by the District Court (Tr., pp. 46 to 53). This finding was affirmed by the Circuit Court of Appeals for the Eighth Circuit (Tr., p. 326). With respect to such a situation your Honors, in Washington Securities Co. v. U. S., 234 U. S. 576, said:

> "The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this Court unless shown to be clearly erroneous."

Believing that the evidence conclusively established the existence of the conspiracy to destroy

plaintiffs' interstate business, charged in the petition, and the unlawful means charged to have been employed to accomplish that purpose, and having in mind that two courts have so found, it will serve no useful purpose to further discuss the facts.

The question, then, presented for decision is this: Is a conspiracy to destroy an established interstate business, by preventing the manufacture of goods which are being sold and shipped in such interstate business, prohibited by the Sherman Act? Section 1 of that act reads:

> "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commence among the several states * * * is hereby declared to be illegal."

With respect to this act this Court, in Eastern States Retail Lumber Dealers Association v. U. S., 234 U. S. 600, 609, said:

> "It (the Sherman Act) broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce."

Prior to this pronouncement, this Court, in Northern Securities Company v. U. S., 193 U. S. 197, 337, had said:

> "In all the prior cases in this court the Anti-Trust Act has been construed as forbidding any

In this way they prevented the building of the proposed railroad, which would have been wholly an intrastate railroad. This Court held that the purchase of the Simpson and Watkins stock and property by the Temple Company, for the purpose of preventing the construction of the railroad, was violative of the Sherman Act and illegal. In the opinion in that case it was said:

> "That under the law of Pennsylvania each of the defendant carrier companies has the power to acquire and hold the stock of coal-producing companies may be true. That the Temple Company may, under the same law, have the power to acquire and hold the capital stock of the Simpson and Watkins collieries may also be conceded. But, if the defendant carriers did, as we have found to be the fact, combine to restrain the freedom of interstate commerce, either in the transportation or **in the sale of anthracite coal in the markets of other states,** and adopted as a means for that purpose the Temple Company, and through it the control of the great Simpson and Watkins collieries, the parts of the general scheme, however lawful, considered alone, become parts of an illegal combination under the federal statute, which it is the duty of the Court to dissolve, irrespective of how the legal title to the shares is held."

In connection with the last quotation it should be emphasized that the stock of Simpson and Watkins

was not a subject of interstate commerce. Its purchase was not part of an interstate commerce transaction. But when its purchase was shown to have been a step in the plan of defendants to restrain interstate commerce, such purchase was declared to be violative of the Sherman Act and illegal.

The deduction to be made from the cases referred to is that the Sherman Act will reach any act, however remote such act (standing alone) may be from interstate commerce, if that act is made an effective part of a combination to restrict such commerce.

The pertinency of these cases is made to appear when the reasoning of the appellants in this case is kept in mind. Their reasoning may be roughly stated thus:

The Sherman Act deals only with interstate commerce.

Manufacture is not interstate commerce.

Therefore, the Sherman Act is not concerned with the stoppage of manufacture.

With equal propriety might the defendants in the Northern Securities Company have reasoned:

The Sherman Act deals only with interstate commerce.

The purchase of share of stock of interstate railroads is not commerce.

Therefore, the Sherman Act has no concern with such purchase.

The futility of such reasoning has been so thoroughly demonstrated that it is now rarely resorted to. The comprehensiveness of the Sherman Act is no longer a question. It has been demonstrated that it will strike down **any** means by which a combination or a conspiracy seeks to restrict interstate commerce, and if stoppage of manufacture is resorted to as a means of destroying or restricting interstate commerce, then such stoppage is prohibited by the Anti-Trust Act.

In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, the plaintiff had been engaged in the manufacture of refined sugar which it sold in interstate commerce. It had suspended its business for a time. It made its plans to resume its business. Thereupon the defendant, American Sugar Refining Company, a competitor, conspired with the owner of a majority of its stock to acquire control of the stock and prevent the plaintiff from resuming its former business. The Circuit Court of Appeals for the Second Circuit held that the conspiracy to prevent the Pennsylvania Company from resuming the manufacture of refined sugar practically restrained interstate commerce and was violative of the Anti-Trust Act.

In the case of American Column and Lumber Co. v. U. S., 257 U. S. 377, the plan was adjudged an illegal combination in restraint of trade. The finding of the

District Court was affirmed in this court, and one of the grounds for the affirmance upon which special emphasis was laid was the finding that the association of which appellants were members had conspired **to curtail production.** Production is but another name for manufacture. By curtailing production, the defendants reduced the supply and increased the price. Production was but one step in the interstate business of the lumber companies involved. Production alone was not interstate commerce. But, because curtailment of production decreased the volume of interstate commerce in lumber and increased the price of lumber shipped in interstate commerce, a conspiracy to curtail production was held to be violative of the Sherman Act. In the opinion, the Court said:

> "Convinced, as we are, that the purpose and effect of the activities of the 'open competition plan' here under discussion were to restrict competition and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber **by concerted action in curtailing production** and in increasing prices, we agree with the District Court that it constituted a combination and conspiracy in restraint of interstate commerce within the meaning of the Anti-Trust Act of 1890 (26 Stat. 209), and the decree of that Court must be affirmed."

The application of the Sherman Act to labor conspiracies is of long standing. Even prior to the case of Loewe v. Lawlor, 208 U. S. 274, that act had been invoked to restrain or punish those who conspired to restrain interstate commerce as a means of advancing the interests of employes engaged in a contest with employers. See

U. S. v. Workingmen's Council, 54 Fed. 994;
U. S. v. Elliott, 62 Fed. 801;
Thomas v. Railway, 62 Fed. 803;
U. S. v. Debs, 64 Fed. 724.

In Loewe v. Lawlor the evidence showed that the plaintiffs were manufacturers of hats in Danbury, Connecticut; that they enjoyed an interstate trade in some twenty states other than the State of Connecticut; that they were practically dependent upon this interstate trade. That at the time the conspiracy complained of was formed "they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in states other than Connecticut, and that if prevented from carrying on the work of manufacturing these hats, they would be unable to complete their engagements." From a footnote to the opinion it appears that plaintiffs claimed that the number of their employes was more than 230, and that the annual output of their

factory amounted to over $400,000.00 per year. The labor unions, failing in an attempt to unionize the plaintiffs' factory, instituted a boycott against plaintiffs' hats in other states and against dealers in other states who might purchase from plaintiffs.

Now, if appellants in this case had been defendants in the case of Loewe v. Lawlor, they would have argued, no doubt, that hats manufactured in Connecticut and sold and delivered to dealers in other states had ended their interstate transportation, and were no longer a part of interstate commerce, and that to boycott such hats after they had ceased to be a part of interstate commerce, and to boycott dealers in such hats who were not seeking to sell them in interstate commerce, could not constitute an interference with interstate commerce. If such an argument were made, it would have been answered by the following declaration of this Court:

> "The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other states, and that, for the direct purpose of destroying such interstate traffic, defendants combined, not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the state, but also to prevent the vendees from reselling the hats which they had imported from Connecticut or from further negotiating with plaintiffs for the purchase and interstate transportation of such

hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a state, and some of them were, in themselves, as a part of their obvious purpose and effect, beyond the scope of federal authority, still, as we have seen, the case must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If **the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced, and, at the other end, after the physical transportation ended, was immaterial.**"

We have set out a part of the foregoing quotation in bold-face type to emphasize it, because of its bearing upon the case in hand.

In the Danbury Hatters case the boycott was directed at the manufacturers' goods after transportation had ended and the hats had lost their status as a part of interstate commerce. They were boycotted as a means of destroying the interstate business of the manufacturers. In the instant case the prevention of manufacture of plaintiffs' trunks and leather goods was adopted as a means of destroying the interstate business of these plaintiffs. In the Danbury Hatters case the means employed operated at one end, after transportation ceased, and in this

case they operated at the other end, before transportation commenced. The purpose in each case was identical. The purpose of the defendants in the Danbury Hatters case was to destroy the interstate commerce of the manufacturers. The purpose of the defendants in this case was to destroy the interstate commerce of these plaintiffs. In both cases the ultimate object was the same, i. e., the unionization of the factories of the manufacturers. This Court points out that in both cases the Sherman Act is violated.

Another case which illustrates the same principle and points to the same application of the Sherman Act is that of Duplex Printing Press Co. v. Deering, 254 U. S. 443. In that case the unions there sued were charged with a conspiracy to boycott the products of the plaintiffs' factory, to injure and destroy plaintiffs' good will, trade and business, and especially to obstruct and destroy its interstate trade. The specific acts complained of, as disclosed in the opinion of this Court, were:

> "Warning customers that it would be better for them not to purchase, or, having purchased, not to install presses made by complainants, and threatening them with loss should they do so; threatening customers with sympathetic strikes in other trades; notifying a trucking company, usually employed by customers to haul the presses, not to do so, and threatening it with trouble if it should; inciting employes of the

trucking company and other men employed by customers of complainant to strike against their respective employers, in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men by threatening them with loss of union cards and with being blacklisted as 'scabs' if they assisted in installing the presses; threatening an exposition company with a strike if it permitted complainant's presses to be exhibited, and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in and about New York City and delivery of them in interstate commerce, such as injuring and threatening to injure plaintiff's customers and prospective customers and persons concerned in hauling, handling or installing the presses."

From this statement it appears that the conspiracy first began to operate after the presses had been shipped from Michigan and delivered in New York City. Of these acts the Court said:

"The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers."

From which it would appear that the defendants adopted means substantially similar to those adopted

by the defendants in Loewe v. Lawlor. That is, they boycotted plaintiff's presses after they had been delivered in New York City and had ceased to be a part of interstate commerce, and they boycotted those who had purchased such presses, all for the purpose of destroying the plaintiff's interstate business. In the course of the opinion this Court said:

> "In Loewe v. Lawlor, 208 U. S. 274, 48 L. Ed. 488, 28 Sup. Ct. Rep. 301, 13 Anno. Cas. 815, where there was an effort to compel plaintiffs to unionize their factory **by preventing them from manufacturing articles intended for transportation beyond the state**, and also by preventing vendees from reselling articles purchased from plaintiffs and negotiating with plaintiffs for further purchases, by means of a boycott of plaintiffs' products and of dealers who handled them, this Court held that there was a conspiracy in restraint of trade, actionable under Section 7 of the Sherman Act, and in that connection said (p. 293): 'The act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states or restricts, in that regard, the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes.' And when the case came before the Court a second time (235 U. S. 522, 534, 59 L. Ed. 341, 348, 35 Sup. Ct. Rep. 170), it was

held that the use of the primary and secondary boycott and the circulation of a list of 'unfair dealers' intended to influence customers of plaintiffs and thus subdue the latter to the demands of the defendants, and having the effect of interfering with plaintiffs' interstate trade, was actionable."

Thus, in the Duplex case, we find a reaffirmation of the rule that **any** combination to interfere with interstate commerce, and which in its execution directly affects such commerce, is violative of the Sherman Act. We also have a reaffirmation of the rule that it is immaterial whether the means used to prevent interstate transportation "operated at one end, before physical transportation commenced," or "at the other end, after physical transportation ended."

The only questions are:

Did the defendants conspire to destroy an established interstate commerce?

And

Did the means employed have a direct effect upon such commerce?

In Stafford v. Wallace, 42 Sup. Ct. Rep. 397, this Court had before it the constitutionality of the Packers and Stockyards Act of 1921. This act sought to regulate the conduct, and particularly the prices, prevailing at stockyards at which live stock were han-

dled. It was claimed that Congress had no power to regulate stockyards, because of the fact that the yards themselves and the transactions taking place at the yards were wholly intrastate. This Court held that, while the stockyards themselves and the purchase and sale of cattle thereat were wholly intrastate, taken alone, that nevertheless this intrastate property and intrastate acts were so related to interstate commerce as to bring them within the regulatory powers of Congress. In reaching its conclusion this Court reviewed numerous opinions of the Court in which the Sherman Act had been held to apply to transactions which, standing alone, were not a part of interstate commerce, but which were found to be so intimately related to interstate commerce as to bring them within the control of the Antitrust Act. In its opinion the Court said:

> "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations, which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This Court declined to defeat this purpose in respect of such a stream and take it out of com-

plete national regulation by a nice and technical inquiry into the noninterstate character of some of its necessary incidents and facilities, when considered alone and without reference to their association with the movement of which they were an essential but subordinate part."

The Court in the Stafford case quotes from U. S. v. Ferger, 250 U. S. 199, wherein the Court had under consideration an act of Congress providing punishment for forgery and utterance of bills of lading for fictitious shipments in interstate commerce. It had been contended in that case that there could be no commerce in fraudulent and fictitious bills of lading, and from this it was argued that Congress had no power over such acts. This contention was answered in that case by this Court as follows:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the purposes are sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 150 U. S. 564), and with a host of other acts which, because of their relation to and influence upon interstate

commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

Another case that illustrates the application of the same principles is that of Lamar v. U. S., 260 Fed. 561. The opinion in that case was rendered by the Circuit Court of Appeals for the Second Circuit. Certiorari to this Court was applied for and denied (250 U. S. 673). In that case defendants had been charged and convicted of a violation of the Sherman Act, the specific complaint being that they conspired to restrain freight trade and commerce in munitions; that is, to stop manufacture, transportation and distribution thereof by instigating strikes on the part of employes concerned in such manufacture and distribution. The conviction of the defendants was sustained by the Circuit Court of Appeals, and its act in doing so was inferentially approved by this Court by the denial of certiorari. The analogy of that case to this is apparent. There the defendants sought to stop manufacture and distribution by instigating strikes. Here the defendants sought to do the same thing by instigating and conducting a strike. In that case they failed to accomplish their purpose. It was not shown that they had succeeded. In this case the defendants were successful for a time. If a conspiracy to instigate strikes in manufacturing plants is, as was decided in the Lamar case,

a violation of the Sherman Anti-Trust Act, even though no interference with interstate commerce actually results, certainly a conspiracy to stop manufacture, by means of a strike and attendant violence, as was the situation in this case, resulting in the actual stoppage of a vast interstate business, was likewise a violation of the Sherman Act which the District Court had power to restrain. In the Lamar case the Court of Appeals used this significant language:

> "It does not militate against this conclusion to urge (as has been done) that the object of the statute of July 2, 1890, was not to prevent agitation against a trade believed by defendants to be both impolitic and immoral, or to assert (what is true) that defendants failed in effecting any hindrance of trade, or (what we may assume as true) that no one of the defendants had any suspicion that the Sherman Act stood in the way of either forming or performing their scheme for stopping war in Europe through lack of supplies, and keeping the United States out of war by inability to make or deal in the means thereof."

The case upon which appellants place most reliance is the Coronado Coal Company case. In that case this Court said:

> "Coal mining is not interstate commerce. The obstruction of coal mining, though it may pre-

vent coal from going into interstate commerce, is not a restraint of that commerce, **unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred.**"

Judge Sanborn, sitting for the Court of Appeals in the instant case, points out that:

> "The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce."

To this, Judge Sanborn adds:

> "So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule. If the obstruction to it is intended directly to restrain interstate commerce or if such obstruction has such a direct, material and substantial effect to restrain it that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the Federal Court under the Anti-Trust Act."

In distinguishing the Coronado case from the instant case and from cases like Loewe v. Lawlor and

the Duplex Printing Press case, Judge Sanborn, in the opinion referred to, says:

> "While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them and the results in the various cases necessarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the Court said: 'The plaintiffs charge that there has been and is a continuously operating conspiracy between union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it,' and it held that the plaintiffs were not entitled to recover against District No. 21, because 'In a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in District No. 21 of 150,000 tons a week, 5,000 tons a week which the Bache-Denman mines in most prosperous time could not exceed, would have no appreciable effect upon the price of coal or nonunion competition' (42 Sup. Ct. Rep. 570, 582, 584), and the Court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation."

From the foregoing and from an examination of the opinion of this Court in the Coronado case, it would appear that the conspiracy complained of in the Coronado case was one between the union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it. This Court concluded that the conspiracy thus described was not established by proof that the defendants combined and used violent means to prevent nonunion men from working in the Bache-Denman mines. As pointed out by Judge Sanborn, the conspiracy alleged and proved in the instant case is entirely different from that involved in the Coronado case. Referring to this case Judge Sanborn said:

> "In the case before this Court now, the gravamen of the complaint is not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent, if possible, and to restrain as far as possible, the flow of the plaintiffs' existing continuous current of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make and deliver the articles, which were the subject of that commerce to customers in states other than Missouri."

Another case upon which the appellants place reliance is that of Hammer v. Dagenhart, known as

the Child Labor case. The act of Congress involved in that case prohibited the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen had been employed or permitted to work, or children between the ages of fourteen and sixteen had been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 o'clock p. m. or before the hour of 6 o'clock a. m. The Court in its opinion in that case points out that the purpose of the act was to standardize the ages at which children might be employed in mining and manufacturing within the state. From this it follows that the purpose of the act was not to regulate commerce, but to regulate employment. The Court points out that the goods shipped were, of themselves, harmless; that the act permitted them to be freely shipped after thirty days from the time of their removal from the factory. These facts indicated conclusively that the restrictions placed on the manufacture of the goods had absolutely no effect upon the goods themselves or upon the commerce into which they flowed, and that the sole purpose of the act was to regulate the employment of children within the state. This, the Court held, Congress had no right to do. If the employment of children could have been said to have

an objectionable effect upon the goods manufactured by them, intended for shipment in interstate commerce, undoubtedly the Supreme Court would have adjudged the act of Congress valid. For instance, the Pure Food and Drug Act has been held a valid exercise by Congress of its power to regulate interstate commerce—this because, interstate commerce is affected by the adulteration of food and drugs which enter that commerce. But, because child labor had no relationship to commerce, and the goods manufactured by child labor were in no manner affected by their production, and as Congress was not, in fact, attempting to regulate commerce, but only to regulate the employment of children, this Court held the act unconstitutional. The distinction between the Food and Drug Act and the Child Labor Act makes it apparent that Congress can regulate anything that affects interstate commerce, but beyond that it cannot go.

In the present case, as pointed out by the opinion of the Circuit Court of Appeals for the Eighth Circuit, plaintiffs were possessed of an established interstate business; it amounted to more than $2,500,000.00 annually; it embraced all of the business in that particular line emanating from a great commercial center—the City of St. Louis; two courts have found that the defendants conspired to destroy this interstate business. For a time, and until the injunction

was issued, they succeeded in completely destroying this interstate business. They destroyed it by preventing the manufacture of goods which were to supply interstate orders and to sustain the currents of interstate business which the plaintiffs enjoyed. Their direct object was the destruction of this business, for only by its destruction could the injury be inflicted on plaintiffs which would compel them to yield to the demands of the defendants to unionize their plants. The restraint imposed was not negligible; it was complete as to all the commerce flowing from St. Louis in this particular line. It was not an indirect and incidental restraint on interstate commerce. The conspiracy charged was one to destroy this interstate business. The destruction of this business was the direct object of the conspiracy. Both the District Court and the Court of Appeals have found that such was its object. Such being its object, it cannot be said that the restraint was incidental. In this situation the District Court and the Circuit Court of Appeals for this circuit found that the conspiracy was violative of the Sherman Act. While "manufacture is not interstate commerce," a stoppage of manufacture was in this case undoubtedly a means, and intended as a means, for destroying plaintiffs' interstate commerce. The stoppage of plaintiffs' interstate commerce by the means

employed in this case was just as effectively a restraint upon interstate commerce, and just as violative of the Sherman Act, as would be the act of plaintiffs' competitors in Chicago, for instance, should they, for the purpose of destroying competition, purchase the stock of the plaintiff companies and by their control, thus secured, stop the manufacture of all goods in plaintiffs' factories. In the case just supposed, the conspirators would not have physically interfered with any interstate movement of goods; they would have merely stopped their manufacture. They would have destroyed the plaintiffs' business by stopping it at its source, and this for their personal advantage. So, in the present case, the defendants, for their personal advantage, conspired to, and did destroy the plaintiffs' business for the time being, by stopping the manufacture of their goods intended to supply their interstate business. The two cases would be identical in principle. Both would be violative of the Sherman Act.

Upon the foregoing considerations and those advanced in the opinion of the Circuit Court of Appeals, we respectfully ask that the judgment of the Court of Appeals be affirmed.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

FEB 29 1924
WM. R. STANSBURY
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Warsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, George Wenk and Benjamin Schnitz, Appellants,

v.

Herkert & Meisel Trunk Company, a Corporation; P. C. Murphy Trunk Company, a Corporation; James A. Quirk Trunk Company, a Corporation; Stability Leather Goods Manufacturing Company, a Corporation, and H. A. Kolb Trunk and Case Company, a Corporation, Appellees.

No. 878. 233

APPELLEES' SUPPLEMENTAL MEMORANDUM.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Warsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, George Wenk and Benjamin Schnitz, Appellants,

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No. 878.

APPELLEES' SUPPLEMENTAL MEMORANDUM.

Appellants have printed in their record the opinion of Judge Faris, the District Judge before whom the case was tried. In this opinion Judge Faris ex-

pressed certain personal views upon the jurisdictional question which were at variance with the decisions of the Circuit Court of Appeals for the Eighth Circuit, and which he felt he had to disregard because of the controlling authority of the Court of Appeals.

Subsequently Judge Faris had before him another case involving the same question, the case being Con P. Curran Printing Company v. Allied Printing Council. In the case just mentioned he rendered an opinion which we desire to call to the Court's attention, because it shows that upon this vital question of jurisdiction Judge Faris has changed his views, so that they are now in accord with those of the Court of Appeals in the instant case.

For the benefit of the Court we print herewith his opinion in full.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Con P. Curran Printing Company, a Corporation,
Plaintiff,
vs.
Allied Printing Council et al.,
Defendants.
In Equity.
No. 5759.

Faris, J.

Oral Opinion of the Court.

An application was made to the Court some months ago for a preliminary injunction in this case. It is a case bottomed upon the provisions of the Sherman Act, brought by an employer against certain local labor unions; against certain individuals as such, and as officers of the defendant labor unions.

Upon the hearing of the case much evidence was taken on both sides, not only upon what I may call the merits of the case; that is, upon the question whether the defendants had committed various unlawful and unpeaceful acts, but also upon the question of jurisdiction, which was, perhaps, the most strongly contested point, or issue, in the case.

Considerable delay has occurred in this case, the blame for which the Court thinks it ought to cast upon counsel, for it has been due to the fact that counsel were slow in furnishing the Court briefs with regard to their several positions. The last of these briefs was furnished on last Saturday, the third of this month.

As forecast, defendants contended upon the hearing on the application for a temporary injunction, and still contend, that this Court has no jurisdiction to grant a temporary injunction, for the reason that the facts proven do not serve to take the case out of the rule announced by the Supreme Court of the United States in the case of United Mine Workers of America v. Coronado Coal Company, 259 U. S. ..., nor serve to bring it within the rule of the case of United Leather Workers etc. v. Herkert & Meisel Trunk Company, 284 Fed. 446. As I understand the attitude of counsel for the defendants, no very strenuous contention is made that the facts adduced upon what I have seen fit to call the "merits" are not sufficient, if this Court has jurisdiction, to permit the granting of the temporary injunction prayed for. I think no question can fairly be raised touching that. The proof of unpeaceful and unlawful acts is such, as the record discloses these things, that no one would, I think, have the temerity to insist that, if this Court has jurisdiction, an injunction ought not to be granted. So, I shall not go into that question, but shall assume, as I think the record clearly warrants me in assuming, that if this case is in a court which has jurisdiction to grant an injunction, then a temporary injunction ought, without any doubt, to be granted here.

But, since there is no diversity of citizenship, and since this Court can take jurisdiction only in the event that the facts adduced bring it within the purview of the Sherman Act; and since, I have already stated, it is strenuously urged that such facts do not make the case thus to fall, it is urged that there is no jurisdiction here.

I may say in passing that I put no stress upon the fact that some of the printing in hand was of blanks and forms for use by interstate common carriers in transacting business with the Interstate Commerce Commission. As to such work, I see no reason why the rule applied in the case of Hammer v. Degenhart, 247 U. S. 251, and the case of In re Green, 52 Fed. 113, should not apply, since, under the rule announced in the two cases above cited, neither the intent nor the ultimate destination, but the actual fact of the commencement of interstate movement, is the test of whether an article manufactured in a state is in course of interstate carriage so as to entitle it to protection under the commerce clause of the Federal Constitution.

There is, of course, some incidental stress to be placed upon the fact that I have just, in effect, mentioned. That stress arises, not from the peculiar destination of these forms and blanks, but from the fact that they formed, or were intended to form, a part, when manufactured, of commerce between the states. I may not have made the distinction clear, but it is clear in my mind, and it may become clearer from what I shall subsequently say about it.

Not the above question, then, but the question of whether the strike of defendants was entirely local, as in the case of United Mine Workers of America v. Coronado Coal Company, supra, or whether it was so far nation-wide as that from it a conspiracy, whose effect was appreciable in determining and reducing the flow of commodities in commerce between the states, can be fairly and reasonably deduced, is the question to be resolved upon the facts in the record before me.

As stated, the record is very voluminous in this case. I shall not attempt to mention but a few of the things which it contains, and those few will pertain wholly to facts bearing upon the question of jurisdiction under the Sherman Act.

For a time prior to May 1, 1921, a contract had been in effect between plaintiff and the various printing unions which are defendants here, whereby plaintiff mantained what is called a "closed shop." Plaintiff, upon the expiration of this contract, refused to continue its business as a closed shop, or to acquiesce with the insistence of the defendant unions, that it put in force and maintain a 44-hour week, which regulation touching the 44-hour week was, perforce certain resolutions of the International Typographical Union, a necessary incident of a closed shop.

Upon these two questions, principally, negotiations broke up, and this strike followed. One side contends that it was a strike, the other side insists that it was a lockout. Terminology cuts no figure in the law of the case. Whether a strike or a lockout ensued makes no difference in the case. The ultimate facts are that the defendant unions insisted on an open shop and a 44-hour week. Plaintiff refused to consent to these two conditions, and thereupon the component members of defendant unions, under the order of the respective unions, and pursuant, I think, to authority and resolutions of the International Typographical Union, quit work and began to picket the plant of plaintiff in an unpeaceful and unlawful way.

The defendant, Allied Printing Council, seems to be composed of representatives of the several local unions. These local unions are affiliated with the

International Typographical Union, which, as its name tends to indicate, has jurisdiction over the workers in the printing trades, not only in the United States, but in Canada as well. In short, the local unions, as, for example, defendant, St. Louis Typographical Union No. 8, Printing Pressmen's Union No. 6, as well as the other local unions named as defendants here, while locally independent, except in so far as they operate together through the local Allied Printing Council, are yet all allied with the International Typographical Union, either directly, or through agreements with the several international unions with which the local Pressmen's Union, Bookbinders' Union and other unions herein made defendants are affiliated.

No necessity exists at this time to trace, or attempt to trace, accurately, the manner or means of this affiliation, or its varied ramifications, so I do not attempt it in this brief statement. I do not consider that it makes very much difference as to whether these affiliations and ramifications are accurately stated here or not, so I have not attempted, and shall not attempt, to follow them very closely.

Before the differences which brought about this controversy arose, the International Typographical Union had declared in favor of the 44-hour week, and was making efforts to compel the nation-wide adoption thereof by all employers of labor in the printing trade.

The Book of Laws of the International Typographical Union, among other things, provides in section 159 that:

> "It is imperatively ordered that no strike or lockout shall be deemed legal, or moneys ex-

pended from the defense fund on that account, unless the strike or lockout shall have been authorized or recognized by the Executive Council; but should a strike, lockout or reduction of wages be forced on a union without an opportunity to carry out the provisions of sections 153 and 154, said union shall be entitled to the full privileges of the defense fund."

Section 153 of the Book of Laws of the International Typographical Union, above referred to, provides in substance that no strike shall be called until the president of the International Typographical Union, either in person or by proxy, shall go to the home of the local union and endeavor to adjust the differences. If such effort to adjust shall fail, the president shall advise the Executive Council of the International Typographical Union, and, if the Executive Council thereupon shall decide in favor of the strike, the local union shall be authorized to call a strike. When a strike has thus been called, the Executive Council is authorized to pay the officers of the local striking union certain strike benefits, which are set out in Section 162 of the International Typographical Union Book of Laws.

It will be observed, then, from this, that under the ironbound rules of the International Typographical Union, with which the defendant unions are affiliated, no lawful strike is possible, and no lawful benefits are payable by the International Typographical Union to the several local unions unless, as a condition precedent, the strike wherein such benefits are paid has been authorized theretofore by the affirmative action of the International Typographical Union, through its Executive Council.

It follows, then, of course, that if this strike is legal, its legality must be determined upon the question of whether it has been so far recognized by the International Typographical Union as that the latter has paid from its treasury moneys with which to carry the strike on, and moneys which have been applied to the payment of benefits, and to the payment of pickets, and other officers or members of the local unions; if such payments have been made, clearly, in the light of the quotation made from the Book of Laws of the International Typographical Union, then the strike has been recognized, and is being aided and abetted by the International Typographical Union.

Pursuant to the above provision (it is to be assumed) the International Typographical Union advanced, up to December, 1921, for "benefits and special assistance" to the St. Louis unions, on account of this strike, $22,936.00, as also a further sum designated as a "loán," of $20,000.00. Up to May, 1922, the International Typographical Union had advanced money, designated on its official reports a "loan" to fendant, St. Louis Typographical Union No. 8, in the sum of $46,685.69. During the year 1922, and for a portion of the year 1921, and prior to the hearing of this case, there were, as is shown by the reports of the International Typographical Union, then pending some two hundred and twenty strikes among the allied printing trades unions in various places and cities of the United States and Canada, which were being waged in order to obtain the 44-hour week, or to prevent the open shop. These strikes involved practically all the states in the Union. A 10 per cent

strike assessment was being levied and collected by the International Typographical Union, and assistance and strike benefits were being furnished to approximately eight thousand striking members of the crafts and unions affiliated with the International Typographical Union. The whole number of these strikes were being fostered, aided and abetted during all of this time by the International Typographical Union; and moneys, where necessary, were being furnished by the latter to carry on to a successful issue all of these two hundred and twenty strikes. Seemingly, vast sums of money were being gathered and spent for this purpose by the International Typographical Union. For the year ending May, 1922, there had been expended, seemingly, for this purpose, the sum of $8,863,000.00 by the International Typographical Union. I say "seemingly," because upon this point the object of the payment, or expenditure, of this vast sum does not clearly appear from the official publications. I assume, however, that beyond mere incidental expenses there could be no other use for this money, and it is set down in the official reports of the International Typographical Union as "expenditures," all of which, I think, goes to show that the strike of defendant unions was not a local nor isolated instance, but that the movement was nation-wide, and was aided, assisted and abetted by the International Typographical Union, which had acted in bringing it about, as its Book of Laws provided.

Without further comment, and in the light of even these brief facts, it is not possible that the strike here in controversy was local in the sense and way pointed out in the Coronado case, supra. These brief facts,

taken from others of a similar and equally cogent sort, conclusively show that there was brought about by these defendants, and the International Typographical Union acting for them, and in concert with them in this strike, an appreciable interference with interstate commerce.

One phase of the facts which constitutes interference with interstate commerce in such wise and degree as will justify interference by a federal court, under the Sherman Law, is set forth in the late case of the United Leather Workers etc. v. Herkert & Meisel Trunk Company, 284 Fed., l. c. 152, and while I have found myself unable to concur in a thoroughgoing and complete way with all that was said by the Court of Appeals in the above case, it is, of course, binding on me while it is the law, and unless and until it has been reversed by some court superior in authority. However, I think I may say that, generally, I concur in the quotation that I am now about to read:

> "It is contended that because manufacture is not commerce, and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the con-

> tinuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts, or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court."

I think, regardless of the views which I personally expressed in a memorandum filed in the case, from which I have read when the case was decided here, that I may agree with what I have quoted, so far as it goes. I, perhaps, might go a little farther, in this: That I think the Court ought to consider whether the conspiracy which brought about the state of facts stated in the excerpt does, or does not, reach beyond the borders of a given state. If it shall be found that it does so reach; that others in other states (in practically

all of the states of the American Union, and in a part of Canada, as here) were assisting, aiding and abetting; in other words, were conspiring, to stop the flow of commerce in things printed, throughout the whole Union, then such acts constitute an appreciable interference with interstate commerce that ought to be stopped by a federal court.

Therefore, the finding of the Court upon the question of jurisdiction (which, as forecast, I deem the only debatable question presented by the record) should be for plaintiff and against the defendants.

The motion and application for a temporary injunction should be sustained as to all defendants, who have either been served with process, or who have appeared and answered the rule to show cause. A decree may be submitted accordingly.

I think I should fix the bond at ten thousand dollars, to be approved by the Court simultaneously with the signing of the order granting the temporary injunction.

St. Louis, Missouri.
March 7, 1923.